Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S-23NCVC-5 OF 2011
ZABARIAH MOHD J
13 AUGUST 2011

Evidence — Hearsay — Admissibility — Report made by person not called — Whether report admissible — Weight — Newspaper reports — Contents of reports not verified to be true — Whether court should assign any weight to such reports

Tort — Defamation — Libel — Publication of defamatory article in defendant's blog — Defence — Justification — Whether proven — Whether defendant verified that imputations made about plaintiff were true — Whether defendant could rely on defence of justification — Quantum of damages — Factors to consider — Whether plaintiff entitled to compensatory, aggravated and exemplary damages — Whether global sum awarded reasonable

The plaintiff, a renowned senior politician, was at all material times a Member of Parliament of Jelebu, Negeri Sembilan, while the defendant was at all material times a committee member of the youth wing of a rival political party. On 28 December 2010, the defendant had published in his blog an article under the heading of 'Hei Pak Menteri … mana mau lari …' ('the article') with the photograph of the plaintiff prominently displayed at the top left hand corner of the article. The plaintiff alleged that in their natural and ordinary meaning or alternatively by way of innuendo the words of the article were false and malicious or defamatory, in that, inter alia, they were understood to mean that the plaintiff was guilty of raping his Indonesian maid, a criminal offence; that the plaintiff was capable of murdering his Indonesian maid; and that the plaintiff was unfit to hold a public office whether as a minister or as a Member of Parliament. The plaintiff commenced an action based on libel against the defendant and claimed for general, special, aggravated and punitive damages with interest. The plaintiff also prayed for a mandatory injunction to compel the defendant to remove the words from the blog site and a prohibitory injunction to restrain the defendant from further publishing libelous words in his blog. The defendant did not dispute the publication of the defamatory words but pleaded justification as a defence. The defendant's testimony was that his blog about the plaintiff with regards to the defamatory words were actually what he had copied and pasted from the contents of the website of

Harakah Daily. As such, the defendant claimed that he was merely repeating what *Harakah Daily* had published. A

Held, allowing the plaintiff's claim with costs:

(1) The defendant relied heavily on the investigation report of Migrant Care, an NGO of Indonesia that was entrusted with the welfare of Indonesian workers working in foreign lands, to prove his defence. However, the report was a disputed document and was not accepted as evidence because the maker of the document was not called to prove the report. Further the investigation report did not bear the signatures of any person of authority. Thus the said report remained as inadmissible hearsay (see paras 19 & 23–24). B C

(2) The defendant also relied on Indonesian media and newspaper reports ('the reports'), which confirmed that there was an investigation report by Migrant Care pertaining to the alleged rape of the Indonesian maid. However, the contents of the reports had not been verified to be true. Further from the dates of the reports it was clear that the defendant had written his blog before the publication of the reports. Thus, there was no basis for the defendant saying that what he published in his blog on 28 December 2010 was true based on the reports, which were non-existent as at 28 December 2010 (see paras 32–34). D E

(3) The defendant's defence that he had done nothing wrong because he had merely copied from the *Harakah Daily* and pasted it onto his blog was misconceived. This was because the defendant had not only copied and pasted the contents of the *Harakah Daily* to the article in his blog but he had added the photograph of the plaintiff, which had the effect of implicating the plaintiff with the rape case. By putting the photograph of the plaintiff next to the article, the defendant was adding on facts which were not in the original text. Further it is trite law that 'the fact that the defendant was not the original author of the libel but only published it by way of repetition was no defence' (see para 35). F G

(4) Based on the evidence it was found that the defendant had not attempted to find out, investigate or verify whether what he had imputed on the plaintiff was true until he received the writ and statement of claim. The defendant's act of publishing first and investigating later was reckless and irresponsible. The defendant had failed to prove the defence of justification and was liable to the plaintiff for libel (see paras 38 & 41). H

(5) In determining the quantum of damages this court took into consideration, factors such as, the conduct of the plaintiff; the plaintiff's standing in society; the nature of the libel; the mode and extent of publication; the defendant's absence or refusal to retract or apologise; and the whole conduct of the defendant from the date of publication of the I

libel. It was found that there was no evidence of any bad conduct on the part of the plaintiff except for the fact that both parties were on the opposite political divide. This court also found the present case, in which the defamatory words imputed that the plaintiff had committed rape of a foreign maid, to be special in its facts compared to other decided cases (see para 46).

(6) The publication in the present case was via a blog site, which was accessible to everyone who opened the site. This meant that the circulation was worldwide (see paras 56 & 61).

(7) On the facts of this case, there was nothing to show that the defendant had made an offer of a retraction or an apology. It was also clear from the facts that the defendant intended to wreck the reputation of the plaintiff personally and politically. In the circumstances the plaintiff was entitled to compensatory damages for the effect that the imputation had on his personal integrity and reputation. In addition, the plaintiff was also awarded aggravated and exemplary damages. The court awarded the plaintiff a global sum of RM300,000, an amount slightly above the trend of the awards, for compensatory, aggravated and exemplary damages because it found that the special distinguishing factors in this case warranted the granting of such an amount. The plaintiff was also granted the injunction orders he prayed for (see paras 62–63, 70, 73, 76–77 & 79).

[Bahasa Malaysia summary

Plaintif, seorang ahli politik lama yang terkenal, pada setiap masa matan merupakan Ahli Parlimen Jelebu, Negeri Sembilan, manakala defendan pada setiap masa matan merupakan ahli jawatankuasa sayap muda parti politik lawan. Pada 28 Disember 2010, defendan telah menerbitkan dalam blognya satu artikel di bawah tajuk 'Hei Pak Menteri … mana mau lari …' ('artikel tersebut') dengan gambar foto plaintif jelas dipamerkan di bahagian atas sudut kiri artikel tersebut. Plaintif mengatakan bahawa dalam maksud semulajadi dan biasa atau secara alternatif melalui perkataan-perkataan tersirat (*innuendo*) artikel tersebut adalah palsu dan berniat jahat atau berunsur fitnah, yang mana, antara lain, perkataan-perkataan tersebut difahami membawa maksud bahawa plaintif bersalah kerana merogol pembantu rumah Indonesia, satu kesalahan jenayah; bahawa plaintif mampu membunuh pembantu rumah Indonesianya; dan bahawa plaintif tidak sesuai memegang jawatan awam sama ada sebagai menteri atau sebagai Ahli Parlimen. Plaintif telah memulakan tindakan berdasarkan libel terhadap defendan dan menuntut ganti rugi am, khas dan punitif beserta faedah. Plaintif juga memohon untuk injunksi mandatori bagi memaksa defendan mengeluarkan perkataan-perkataan tersebut daripada laman blog itu dan injunksi larangan untuk menyekat defendan daripada terus menerbitkan perkataan-perkataan libel dalam blognya. Defendan tidak mempertikaikan penerbitan perkataan-perkataan berunsur fitnah tersebut

tetapi memplid justifikasi sebagai pembelaan. Keterangan lisan defendan adalah bahawa blognya tentang plaintif berhubung perkataan-perkataan berunsur fitnah sebenarnya adalah petikan yang telah dia ambil dan tampal daripada kandungan daripada laman sesawang *Harakah Daily*. Oleh itu, defendan mendakwa bahawa dia hanya mengulangi semula apa yang telah diterbitkan oleh *Harakah Daily*.

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Defendan amat bergantung atas laporan siasatan Migrant Care, NGO Indonesia yang diamanahkan menjaga kebajikan pekerja Indonesia di luar negara, untuk membuktikan pembelaannya. Walau bagaimanapun, laporan itu satu dokumen yang dipertikaikan dan tidak diterima sebagai keterangan kerana pembuat dokumen itu tidak dipanggil untuk membuktikan laporan itu. Selanjutnya laporan siasatan itu tidak mempunyai tandatangan sesiapa yang berkuasa. Oleh itu laporan tersebut masih kekal sebagai dengar cakap yang tidak boleh diterima (lihat perenggan 19 & 23–24).

(2) Defendan juga bergantung kepada media dan laporan akhbar Indonesia ('laporan tersebut'), yang mengesahkan bahawa terdapat laporan siasatan oleh Migrant Care berkaitan dakwaan rogol pembantu rumah Indonesia itu. Walau bagaimanapun, kandungan laporan tersebut tidak disahkan sebagai benar. Bahkan berdasarkan tarikh-tarikh laporan tersebut adalah jelas bahawa defendan telah menulis blognya sebelum penerbitan laporan tersebut. Oleh itu, tiada asas untuk defendan mengatakan bahawa apa yang diterbitkannya dalam blognya pada 28 Disember 2010 adalah benar berdasarkan laporan tersebut, yang tidak wujud lagi sehinggalah 28 Disember 2010 (lihat perenggan 32–35).

(3) Pembelaan defendan bahawa dia tidak melakukan apa-apa kesalahan kerana dia hanya menyalin semula petikan daripada *Harakah Daily* dan menampalkannya pada blognya telah disalah tanggap. Ini adalah kerana defendan bukan sahaja menyalin dan menampal kandungan *Harakah Daily* kepada artikel dalam blognya tetapi dia telah menambah gambar foto plaintif, yang mempunyai kesan mengaitkan plaintif dengan kes rogol itu. Dengan meletakkan gambar foto plaintif di sebelah artikel itu, defendan telah menambah fakta yang bukan dalam teks asal. Selanjutnya adalah undang-undang tetap bahawa 'the fact that the defendant was not the original author of the libel but only published it by way of repetition was no defence' (lihat perenggan 35).

(4) Berdasarkan keterangan adalah didapati bahawa defendan tidak cuba untuk mencari, menyiasat atau mengesahkan apa yang dikaitkannya ke atas plaintif adalah benar sehingga dia menerima writ dan penyataan tuntutan. Tindakan defendan menerbitkan dulu dan menyiasat kemudian adalah sikap melulu dan tidak bertanggungjawab. Defendan

telah gagal membuktikan pembelaan justifikasi dan adalah bertanggungjawab terhadap plaintif kerana libel (lihat perenggan 38 & 41).

(5) Dalam menentukan kuantum ganti rugi mahkamah ini mengambil kira, faktor-faktor seperti, perilaku plaintif; kedudukan plaintif dalam masyarakat; sifat libel itu; cara dan takat penerbitan itu; ketiadaan atau keengganan defendan untuk menarik balik atau memohon maaf; dan keseluruhan perilaku defendan dari tarikh penerbitan libel itu. Adalah didapati bahawa tiada keterangan tentang apa-apa perilaku tidak baik di pihak plaintif kecuali fakta bahawa kedua-dua pihak berada di dua pihak politik berlawanan. Mahkamah ini mendapati kes ini, di mana perkataan-perkataan yang mengaitkan plaintif telah merogol pembantu rumah asing dianggap sebagai fakta istimewa berbanding dengan kes-kes lain yang telah diputuskan (lihat perenggan 46).

(6) Penerbitan dalam kes ini adalah melalui laman blog, yang boleh dimasuki oleh sesiapa yang membuka laman itu. Ini bermaksud edaran adalah seluruh dunia (lihat perenggan 56 & 61).

(7) Berdasarkan fakta kes ini, tiada apa-apa yang menunjukkan bahawa defendan telah membuat tawaran untuk menarik balik atau memohon maaf. Juga jelas berdasarkan fakta bahawa defendan berniat untuk menghancurkan reputasi plaintif secara peribadi dan politik. Dalam keadaan berikut plaintif berhak mendapat pampasan ganti rugi akibat daripada kaitan atas integriti dan reputasi peribadi beliau. Tambahan, plaintif juga diawardkan ganti rugi tambahan dan teladan. Mahkamah ini mengawardkan plaintif jumlah menyeluruh RM300,000, jumlah lebih sedikit daripada trend award, untuk ganti rugi pampasan, tambahan dan teladan kerana didapati bahawa faktor-faktor istimewa yang berbeza dalam kes ini mewajarkan pemberian jumlah sedemikian. Plaintif juga diberikan perintah-perintah injunksi seperti yang dipohon beliau (lihat perenggan 62–63, 70, 73, 76–77 & 79).]

Notes

For cases on admissibility, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1863–1870.

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 484–645.

Cases referred to

Chin Choon @ Chin Tee Fut v Chua Jui Meng [2005] 3 MLJ 494 ; [2005] 2 CLJ 569, CA (folld)

Dato' Musa Hitam v SH Alattas & Ors [1991] 1 CLJ 314, HC (distd)

Associated Newspapers Ltd v Dingle [1964] AC 371, HL (refd)

Karpal Singh a/l Ram Singh v DP Vijandran [2001] 4 MLJ 161, CA (refd)

Lee Kuan Yew v Jeyaretnam Joshua Benjamin [1990] 3 MLJ 322, HC (distd)

Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun & other appeals [1995] 2 CLJ 912, FC (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173, SC (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (distd)

Legislation referred to

Defamation Act 1957 s 8
Rules of the High Court O 39
Penal Code ss 300, 376(2)(f)

Shafee Abdullah (Azad Basher with him) (Shafee & Co) for the plaintiff.
William Leong (William Leong & Co) for the defendant.

Zabariah Mohd J:

[1] The plaintiff's cause of action against the defendant is based on libel and that the plaintiff is claiming for general, special, aggravated and punitive damages and interest. The plaintiff also prays for mandatory and prohibitory injunction compelling the defendant or his agents to remove the libelous words or words to that effect from his blog site and also to restrain the defendant or his agents from further publishing or caused to be published the said libelous words in his blog.

BACKGROUND FACTS

[2] The plaintiff is a senior politician who is renowned locally and internationally. He is a qualified lawyer and currently is a Member of Parliament of Jelebu, Negeri Sembilan from the United Malay National Organisation ('UMNO') which is the backbone of the ruling coalition of the Barisan Nasional ('BN'). He holds or has held in the federal and national level in Malaysia spanning over a period of 30 years under five Prime Ministers of Malaysia. He has served as Cabinet Minister under the various portfolios as stated in para 1 of the statement of claim.

[3] The defendant is a blogger and a committee member of the youth wing of a political party known as the Parti Keadilan Rakyat for the 2007–2010 session, who has set up a blog located on the world wide website under the title 'Sharpshooter' ('the defendant's Blog').

[4] It is not disputed that the defendant's blog is accessible to the public at large and the users of the world wide website by means of internet connection at the following uniform resource locator addressed at http://sharpshooterblogger.blogspot.com/.

[5] On or about 28 December 2010, the defendant caused to be published in the defendant's blog at *http://sharpshooterblogger.blogspot.com/*, an article under the heading 'Hei Pak Menteri... mana mau lari …' with the photograph of the plaintiff prominently displayed at the top left hand corner of the same containing the following words which the plaintiff claims to be false and/or malicious and defamatory of the plaintiff:

(a) Hei Pak Menteri … mana mahu lari …

(b) Kisah seorang pembantu rumah Indonesia dirogol oleh majikannya yang merupakan seorang menteri bermula apabila sebuah badan kebajikan dan hak asasi manusia, Migrant Care, menerima sepucuk surat aduan daripada adik mangsa.

(c) Surat tanpa tarikh yang ditaip dengan mesin taip biasa itu mendakwa kakaknya yang bernama Robengah telah diperkosa oleh seorang Menteri Kerajaan Malaysia beberapa kali.

(d) Kakak saya telah diperkosa oleh majikannya Pak Menteri beberapa kali. Hingga satu hari tanggal 19/02/07, kuasa Allah perbuatan kejinya telah terlihat oleh Datin isterinya yang sangat baik melayan semua pembantu rumah. Datin telah hantar kakak saya pulang ke Indonesia keesokannya, tanggal 20/02/07, cerita adik mangsa kepada badan yang menjaga kebajikan pekerja Indonesia yang bekerja di luar negeri itu.

(e) Tolong kami Pak. Bersihkan kehormatan wanita Indonesia yang mencari rezeki buat anak-anak yang sekolah. Apakah memperkosa pembantu rumah pekerja asing yang tak bisa baca dan tak bisa tulis, adalah satu budaya orang kenamaan di Malaysia, rayu adik mangsa dalam surat aduan itu.

(f) Tolong bapak rahsiakan alamat kakak saya kerana Pak Menteri itu punya banyak wang dan kenalan di Indonesia. Khuatir nanti keluarga kakak saya akan di apa-apakan seperti kasus Altantuya di Malaysia, tulis adik mangsa itu lagi.

(g) Dalam perbualan telefon itulah, Robengah mengaku diperkosa majikannya. Tetapi beliau meminta sangat-sangat isu pemerkosaannya itu tidak diperbesarkan kerana dia malu dan takut

(h) Maklumlah, dia hanya orang kecil sedangkan Pak Menteri itu orang besar dan berpengaruh.

(i) Robengah kali ini juga meminta agar ia tidak diperbesarkan namun dia mengesahkan telah diperkosa menjelang pulang ke kampong halamannya.

(j) Menurut adiknya, kali terakhir Robengah diperkosa pada 19 Februari 2007 dan kejadian ini telah terbongkar apabila dilihat sendiri oleh isteri menteri ini.

(k) Dokumen kes pemerkosaan ini dikatakan telah sampai ke Kedutaan Indonesia di Kuala Lumpur, Kedutaan Amerika di Jakarta dan pejabat Perdana Menteri ketika Datuk Seri (kini Tun) Abdullah Ahmad Badawi adalah Perdana menterinya.

[6] The plaintiff had reproduced the full text of the defendant's blog in para 4 of the statement of claim. The defendant's blog dated 28 December 2010 can be found in exh D1.

[7] The plaintiff alleged that in their natural and ordinary meaning the said false and malicious defamatory words were understood to mean that:

(a) the plaintiff is guilty of a serious offence of rape which is a criminal offence under s 376(2)(f) of the Penal Code which is punishable with imprisonment for a term of not less than five years and not more than 30 years and shall also be liable to whipping;

(b) the plaintiff is capable of murdering his Indonesian maid in order to conceal evidence of the offence of rape which is also an offence under s 300 of the Penal Code (in order to conceal evidence of the commission of the crime of raping her) which is punishable with death;

(c) the plaintiff is a person with authority who likes to take advantage of his subordinates inclusive of raping his Indonesian maid, Robengah;

(d) the plaintiff belongs to a group of aristocrats in Malaysia who like to take advantage of their illiterate Indonesian maids inclusive of raping them;

(e) the plaintiff is an unfaithful husband for having raped his Indonesian maid, Robengah;

(f) the plaintiff is an immoral person and/or leader; and

(g) the plaintiff is unfit to hold a public office whether as a Minister and/or as a member of parliament and/or in any other capacity whatsoever for having raped his Indonesian maid, Robengah and/or for being capable of murdering his Indonesian maid, Robengah, (in order to conceal the evidence of the commission of an offence of him raping her) and/ or for being a person with authority who likes to take advantage of his subordinates inclusive of raping his Indonesian maid, Robengah.

[8] The plaintiff also pleaded in the alternative, by way of innuendo the said false and malicious or defamatory words or passages or article with the photograph of the plaintiff prominently displayed at the top left hand corner of the same, meant and/or were understood to mean that:

(a) the plaintiff is guilty of a serious criminal offence of having raped his Indonesian maid, Robengah, under s 376(2)(f) of the Penal Code which is punishable with imprisonment for a term of not less than five years and not more than 30 years and shall also be liable to whipping;

(b) the plaintiff is capable of murdering his Indonesian maid, Robengah, (in

order to conceal evidence of the commission of the crime of raping her) which is a serious offence under s 300 of the Penal Code which is punishable with death;

(c) the plaintiff is a person with authority who likes to take advantage of his subordinates inclusive of raping his Indonesian maid, Robengah;

(d) the plaintiff belongs to a group of aristocrats in Malaysia who like to take advantage of their illiterate Indonesian maids inclusive of raping them;

(e) the plaintiff is an unfaithful husband for having raped his Indonesian maid, Robengah;

(f) the plaintiff is an immoral person; and

(g) the plaintiff is unfit to hold a public office whether as a Minister or as a member of parliament or in any other capacity whatsoever for having raped his Indonesian maid, Robengah and or for capable of murdering his Indonesian maid, Robengah.

[9] The defendant claims for general, special, aggravated, punitive and exemplary damages and interest. The plaintiff also prays for both mandatory and prohibitory injunction ie:

(a) compelling the defendant whether by himself or by his agents to remove the libelous words or passages or the article under the heading 'Hei Pak Menteri … mana mau lari …' with the photograph of the plaintiff prominently displayed at the top left hand corner of the same published by him from his blog at *http://sharpshooterblogger.blogspot.com/*;

(b) restraining forthwith the defendant whether by himself and/ or his servants or his agents from further publishing or caused to be published:

(i) the said libelous words and/or passages and/or article and;

(ii) any other libelous words and/or passages and/or articles similarly defamatory of the plaintiff; and

(iii) any cause papers and/or documents pertaining to this suit,

in his blog and/or in any other blogs belonging to any other third parties and/or in any other medium belonging to the defendant and/or in any other mediums belonging to any third parties.

THE COURTS FINDINGS

[10] To succeed in a defamatory action, the plaintiff must prove:

(a) that the words are defamatory;

(b) the words refers to the plaintiff; and

(c) the words were published.

[11] It is to be noted that in the case herein the defendant is not disputing that the above three ingredients have been fulfilled.

[12] It is also not in dispute that the defamatory words bear the meaning that was pleaded in the statement of claim.

[13] Hence, what is left at the trial is for the defendant to prove his defence to the claim.

[14] The defendant claims that those defamatory words which were published were true in substance and in fact ie the defendant pleads only justification as a defence.

[15] Therefore, the court proceeded to hear the evidence of the defendant on his defence of justification.

[16] The defendant's testimony is that his blog about the plaintiff with regards to the defamatory words were actually what he had copied and pasted from the contents of the web site of *Harakah Daily* dated 28 December 2010 as found in exh D2. However, the contents of *Harakah Daily* did not mention the name of the plaintiff, although it mentioned the name of the house maid, Robengah.

[17] In his evidence the defendant said that he knew that the individual Robengah was the house maid of the plaintiff when the Indonesian local newspaper, *Detik News* dated 7 January 2011 and Malaysian *Sinar Harian* dated 9 January 2011 reported that Robengah was the housemaid of the plaintiff. These newspaper reports can be found in exhs D3 and D4. The dates of these newspaper reports are important which I shall elaborate later in this judgment.

[18] The defendant said that he believed that the contents of the newspaper report of *Harakah Daily* dated 28 December 2010, which alleged the said rape towards Robengah is true. The reason the defendant believed the report by *Harakah Daily* to be true as the report mentioned about an investigation being carried out by an NGO of Indonesia known as Migrant Care which was entrusted with the welfare of Indonesian workers working in foreign land.

[19] The defendant had referred to the investigation report by Migrant Care which is in exh IDD5. According to the defendant he had gone to Indonesia and spoke to the author of the investigation report of IDD5, by the name of

A Indah Utami. The defendant said that the said author confirmed that the investigation report belongs to Migrant Care. Indah Utami was one of the persons who had gone to Robengah's house to investigate about the allegations after being directed by the Director of Migrant Care, Anis Hidayah.

B **[20]** The defendant also referred to D6 and D7.

[21] Exhibit D6 is an Indonesian media report by Kompas.com dated 7 January 2011 which confirmed that there is an investigation report by Migrant Care pertaining to the alleged rape.

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[22] Exhibit D7, is an Indonesian newspaper report from *Tempo Interaktif* which states that the Minister Of Foreign Affairs of Indonesia had admitted receiving the investigation report from Migrant Care, however due to the refusal of the victim in lodging a police report and does not want the matter to

D be brought to the judicial fore, that the Ministry could not proceed further with the case. However the ministry said that the ministry is taking an open attitude, in the event that the victim makes a claim.

E **[23]** I did not mark the investigation report which is in IDD5, as it is a disputed document. Therefore, it is incumbent on the defendant to prove the document by calling the maker. Until the end of the trial, the maker was not called by the defendant. The defendant said that representatives from Migrant Care feared of the consequences of coming to Malaysia to testify. This, however

F is not an acceptable excuse. In any event, there is no documentary proof or otherwise to support what the defendant said is true.

[24] Since the investigation report IDD5 had not been accepted as evidence, what remains is merely hearsay evidence which is not acceptable before the

G court.

THE LAW

[25] Section 8 of the Defamation Act 1957 provides that:

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> 8. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injured the plaintiffs reputation having regard to the truth of the

I remaining charges.

[26] The burden to establish justification by proving that the defamatory imputation is true, is on the defendant. See the Supreme Court case on *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173, the Supreme Court had said:

> The burden lies upon the defendant to establish justification. The burden does not lie on the plaintiff to prove that the defamatory words are false, because the law presumes this in his favour: *Belt v Lawes*. To establish justification, the defendant must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation was true: *Peters v Bradlaugh* …

[27] After hearing the defendant's testimony and on an evaluation of the evidence of the defendant in its entirety, I find absolutely no evidence from the defence to prove that the defamatory imputation is true.

[28] The defendant copied from the *Harakah Daily* and pasted it onto his blogsite. However it is to be noted that the report in *Harakah Daily* dated 28 December 2010 never named the plaintiff, but the defendant did, in his blog site. In other words he did not merely copied what was stated in *Harakah Daily* dated 28 December 2010 but add on to the original article of the *Harakah Daily* by putting in a photograph of the plaintiff immediately after the words 'Hei Pak Menteri … mana mau lari …'. Although the name of the plaintiff was not mentioned by the defendant in his blogsite, however the photograph of the plaintiff inserted by the defendant spoke a thousand words.

[29] This situation of writers adding on to the original story is best illustrated in *Associated Newspapers Ltd v Dingle* [1964] AC 371, at p 411 where Lord Denning famously observed:

> … if (the newspaper) adds its own spice and prints a story to the same effect as the parliamentary paper, and garnishes it and embellishes it with circumstantial detail, it goes beyond the privilege and becomes subject to the general law. None of its story on that occasion is privileged. It has 'put meat on the bones' and must answer for the whole joint.

[30] Although the issue at hand in *Associated Newspapers Ltd v Dingle* was on the defence of privilege, the principle is clear, that authors cannot plead the defence when he had embellished or add on facts which were not in the original text. This is precisely what the defendant herein had done ie putting in the photograph of the plaintiff next to his article.

[31] The defendant relies heavily on the investigation report by Migrant Care which is in exh IDD5. This exhibit remained as ID throughout and hence is inadmissible. Further, looking at IDD5, nowhere does it state that the report belongs to Migrant Care. The report also does not bear the signatures of any person of authority.

[32] The defendant is also relying on exhs D6 and D7. D6 is the Indonesian media report by Kompas.com dated 7 January 2011 which confirmed that

there is an investigation report by Migrant Care pertaining to the alleged rape. Whilst exh D7, is an Indonesian newspaper report from *Tempo Interaktif* which reported that the Minister Of Foreign Affairs of Indonesia had admitted receiving the investigation report from Migrant Care, however due to the refusal of the victim in lodging a police report and does not want the matter to be brought to the judicial fore, that the Ministry could not proceed further with the case.

[33] It is pertinent to note that these two newspapers reports D6 and D7 are reports, the contents of which have not been verified to be true. The reporters were not called by the defendant to verify in its truth. Hence the weight of such reports is hardly anything to go by.

[34] Further it is to be noted that, D6 and D7 were dated 9 May 2011 and 7 January 2011, whilst the defendant's blog was dated 28 December 2010. From these dates, it shows that the defendant had written his blog ('D1') before the publication of D6 and D7. Hence, at the point of time when the defendant published his blog of D1, there was no D6 nor D7 for the defendant to rely on to state the basis of his blog. Therefore how could the defendant said that his basis of saying that what he published in his blog on 28 December 2010 was true based on D6 and D7 which was non existence as of 28 December 2010.

[35] Further more, the defendant was of the view that he had done nothing wrong because he had merely copied from *Harakah Daily* and pasted it onto his blog. He said that he was merely repeating what *Harakah Daily* had published. However, this view is misconceived. The reason being that, firstly, the defendant not only copied and pasted what *Harakah Daily* dated 28 December 2010, he had added the photograph of the plaintiff, the effect of which implicating the plaintiff with the rape case. Secondly, it is trite law that 'the fact that the Defendant was not the original author of the libel or slander, but only published it by way of repetition, is no defence'. (Gatley on *Libel and Slander* (9th Ed), at p 849, para 33.43.)

[36] The defendant submits that he was unable to procure Migrant Care's representative and the victim to come to Malaysia to give evidence as they were worried of the consequences if they do so. The defendant cited the case of Altantuya Sharibuu as an example. However, all these came from the defendant, not from any representative of Migrant Care or the victim, Robengah, documentary or otherwise. This is hearsay evidence which is not admissible.

[37] In any event, the defendant did not show proof of his effort to procure the witnesses, except a last minute attempt to file an application under O 39 of the Rules of the High Court 1980 to take evidence in Indonesia on the day

when the trial of this case commenced. Why was this not done earlier as the defendant had prior notice of the hearing much earlier, is beyond comprehension.

[38] The evidence of the defendant shows that he did not attempt to find out, investigate or verify whether what he had imputed on the plaintiff were true. The defendant only went to find out whether what he had published in his blog were true only after receiving the writ and statement of claim herein. He did this by going to Jakarta to investigate. By this time the damage had been done. Whatever the outcome of the defendant's investigation after the publication of the defendant's blog in D1 does not matter anymore. This is a reckless act on the part of the defendant ie publishes first and investigates later. To make the matter worst, what the defendant sought to do in Jakarta did not bear fruit. He could not meet with Robengah to verify the story about the alleged rape. How could he, when he just went to Jakarta for three days. He came back after the three days and that is just it.

[39] There was no further effort nor attempt to find the truth. The act of the defendant shows that he could not care less of what he said in his blog is true or false. Not only is this reckless but a blatant irresponsible act of the first degree.

[40] Since the facts upon which the defendant asserted the defamatory imputation against the plaintiff are not proven to be true or do not exist, the plea of justification collapses.

[41] Given the circumstances, I hold that the defendant had failed to prove the defence of justification and found the defendant liable to the plaintiff for libel.

DAMAGES

[42] It is trite law that a particular libel case cannot be equated with other libel cases. Each libel case is unique and has its own particular and peculiar facts. The Federal Court in said in *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun & other appeals* [1995] 2 CLJ 912 its judgment that:

> We cannot by our judgment set a precedent on the damages to be awarded. The court must consider a number of factors when assessing damages in a libel case. In *John v MGN Ltd* [1997] QB 586 at p 607, Sir Thomas Bingham MR (now CJ) said:
>
> In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it (the defamation) touches the plaintiffs personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of

publication is also very relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation but the significance of this is much greater a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published, and publicly expresses regret that the libellous publication took place.

Damages in defamation cases are described as being at large. The law has not fixed any exact measure for assessment of damages in an action for defamation. There is no mathematical formula by which the quantum can be determined; nor is there any requirement that the damages be assessed with mathematical certainty. But a small sum awarded to a prominent public figure for a serious libel could be interpreted as trivialising the incident.

[43] The Federal court went on to distinguish the difference between the awards of damages in personal injury cases where there is *no intention* to cause harm or damage to the plaintiff. The tort in personal injury cases is based purely on negligence of the defendant and breach of duty of care owed to the plaintiff. The element of punishment or deterrence does not enter into an award in personal injury cases. This is because the award in personal injury cases is to compensate the plaintiff for the pain and suffering which the plaintiff has suffered or will suffer in the future. Whilst, in defamation cases the defendant *intentionally publishes* the injurious false statement to cause humiliation and anguish to the plaintiff, and to injure his reputation. The Federal Court went on:

The intention to defame the plaintiff is not necessary for the court to impose liability on the defendant because the intention to defame can be inferred from the publication of the defamatory statement which gives rise to the presumption of malice on the part of the defendant. The plaintiff in a defamation case gets compensation not for his damaged reputation. He gets it because he was injured in his reputation by being publicly defamed. The award of damages given to him serves as a vindication of the plaintiff to the public and as a consolation to him for a wrong done.

[44] In determining quantum of damages the following factors are taken into consideration:

(a) the conduct of the plaintiff;

(b) the plaintiff's position and standing in society;

(c) the nature of the libel;

(d) mode and extent of publication;

(e) the absence or refusal of retraction or apology; and

(f) the whole conduct of the defendant from the time the libel was published down to the very moment of the verdict.

THE CONDUCT OF THE PLAINTIFF

[45] There is no evidence that the defendant had been provoked by the plaintiff into publishing the article. There was nothing that the plaintiff had done to justify the defendant reacting the way he did by publishing the defamatory statements of the plaintiff as can be found in the case of *Karpal Singh a/l Ram Singh v DP Vijandran* [2001] 4 MLJ 161 where the conduct of the plaintiff and the defendant therein more or less cancelled each other out. Both the plaintiff and the defendant therein are politician and lawyer. The conducts of both of them were taken into account by the court when the court said as follows:

> The respondent relied on his position as a public figure in this suit. But the same members of the public who would have read the reports in the two newspapers would also have reading all the newspapers in the country about him and the reasons leading to the resignation of the respondent from the post of deputy Speaker and his downfall in politics. It would not be correct to say that the plaintiff's standing, character, credit and reputation as a public figure was at its pinnacle at the time the libel was committed and totally collapsed because of this libel. In any event, he certainly cannot claim to enjoy a higher standing, credit and reputation as a public figure than Dato' Musa bin Hitam who was only awarded RM100, 000 for such serious libel published just before the UMNO General Assembly.
>
> Now coming to the appellant. He is a well known lawyer and politician. He was a member of Parliament and a state assemblymen representing opposition at that time. It is common knowledge that he was responsible for exposing the respondent culminating in the respondent's political downfall. The cheque incident gave him another opportunity to further ruin the respondent. He utilised it to the fullest. The fact that his press statement was typed on his 'Member of Parliament' letterhead with his party symbol and the fact that he signed the press statement as 'Deputy Chairman, DAP, Malaysia' and 'Member of Parliament, Malaysia' shows his political motive. He did not apologise. And he stood his ground throughout. That is the scenario.

[46] There is no evidence directly or otherwise to suggest any bad conduct on the part of the plaintiff either before or after the publication to deserve such an imputation by the writing of the defendant, except for the fact that both are on the opposite political divide. The blatant disregard for the truth by the defendant in his publication of the blog shows nothing but a political motive to bring the downfall of the plaintiff (who is a man of high reputation in society) in his political career. The imputation is not an ordinary imputation of corruption or abuse of powers which is the rampant accusations hurled against politicians or persons holding public positions in the executive branch of the Government, but a monstrous charge of rape. In the case of *Chin Choon @*

Chin Tee Fut v Chua Jui Meng [2005] 3 MLJ 494; [2005] 2 CLJ 569 at p 499 (MLJ) and at p 574 (CLJ) where the Court of Appeal considers such factors in awarding damages to the plaintiff:

> In the presence instance, the respondent is a man of high reputation and has in no way misconducted himself either before or after trial. By contrast, the appellant made a monstrous charge against a man whose honesty has never been called into question.

[47] The Court of Appeal awarded RM200,000 in that case.

THE PLAINTIFF'S POSITION AND STANDING IN SOCIETY

[48] The plaintiff is presently a Minister in the Cabinet and used to hold various ministerial positions in the Cabinet (refer to para 1 of the statement of claim). He has been in the country's administration for the past 37 years and there is no indication that he will not continue to be so. He is certainly a public figure. He is well known in the country as well as in the international scene. This is in sharp contrast to the case of *Dato' Musa Hitam v SH Alattas & Ors* [1991] 1 CLJ 314 where the plaintiff, Dato' Musa Hitam no longer held any public office as a member of the elected executive. In that case the High Court judge made a single global award of RM100,000 which consisted of compensatory and aggravated damages.

[49] The defendant's evidence suggested that as far as the reputation of the plaintiff is concerned, there has not been any effect as the plaintiff is still holding his position as a Cabinet Minister and he is still a Member of Parliament.

[50] However, the defendant is taking a simplistic view of the whole situation. An imputation of such a nature from the defendant's blog will certainly have a repercussion in the next election for the plaintiff as a member of Parliament in his constituency. Public will not elect someone who is of such low moral character.

THE NATURE OF THE DEFAMATION

[51] The allegation is rape against a maid, who is a foreigner from another country.

[52] This is the most gross of allegation one could made against another individual, more so a serving Cabinet Minister and a Member of Parliament

whose every move is under constant scrutiny of the public. The defamatory words imputes that the plaintiff is of an immoral character unbefitting to hold a public office.

[53] Firstly, the act alleged against the plaintiff is a criminal offence. Not only is it a criminal offence but also an act against women's dignity. It connotes an imputation on the plaintiff of being an unfaithful husband and leads a life of promiscuity and has no regard and respect for women, more so a maid.

[54] Secondly, the allegation is not healthy in terms of diplomatic ties and adds fuel to fire of the wrath of the neighbouring country. There is judicial notice of cases of abuse of Indonesian maids being brought to court over the last few years where it had caused concern of the Indonesian government. Considering the proximity of Indonesia to Malaysia, it is crucial that stable relations between the two countries be continuously maintained. The act of the defendant in publishing such imputation on the plaintiff will, off course not be of help in this issue. This is evident by a police report lodged by one Nor Azizi bin Abd Aziz at D8 which states as follows:

> Saya mendesak satu siasatan dibuat ke atas pendedahan dua laman Blog … mengenai satu laporan siasatan yang menyatakan seorang buruh Indonesia telah dirogol oleh seorang yang dinamakan sebagai Menteri Kabinet Malaysia.
>
> Laporan ini dianggap serius kerana menjejaskan imej Negara, dan jika ia benar ia mampu menjejaskan hubungan dua hala Malaysia-Indonesia yang sememangnya mudah 'panas'. Ini juga tidak ada tindakan diambil boleh menjejaskan kepentingan Negara jika kes ini digunakan sebagai bahan ugutan pihak tertentu.

[55] Thirdly, there has not been any allegation of such a nature (rape) in the cases of defamation cited so far. Hence the present case is special in its facts and not 'run of the mill' type of cases compared to the other decided cases so far.

MODE AND EXTENT OF THE PUBLICATION

[56] The publication was via blog site which is accessible to everyone who opened the site.

[57] Unlike the case of *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, where the circulation was localised within Sarawak only. There was no evidence to show that the publication was also done elsewhere. In that case the court awarded RM100,000 as compensatory damages as the court considered that the plaintiff was not the Chief Minister or the head of state at the time when he was defamed. Even so, the court still took into account that the plaintiff having held such high positions would have been well known and have a wider circle of friends thereby maintaining his high

position in society. In that case the court also found that there was the absence of malice on the part of the second defendant.

[58] In the *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 3 MLJ 322 case the slanderous words were addressed to 1500 people at an election rally.

[59] Compared to our present case, where the extent of circulation via the internet is enormous. From D14 it shows hits reaching 100,000. The effect in publication via the internet has a tremendous multiplying effect. There is no knowing of the fact that it was downloaded and circulated to others.

[60] The circulation is not only confined to within the country but also to the world outside.

[61] In summary the extent of the circulation is worldwide. Such is the power of the internet. This is one of the distinguishing factor compared to the other decided cases of defamation.

THE ABSENCE OR REFUSAL OF RETRACTION OR APOLOGY

[62] The willingness of the defendant to tender a retraction or an apology has been regarded as a mitigating factor in the assessment of damages.

[63] On the facts of this case, there is nothing to show that the defendant had made such offer at all. In fact after this court had issued an injunction order against the publication of the article, the defendant still persist in publishing the same. This is evidently clear in exh P11 at p 2 when the defendant put onto his blog on 7 January 2011 (when this case was ongoing) these words:

> Sdr. Amizuddin Ahmat vs Datuk Seri Rais
>
> Perjuangan kebebasan Blogger lawan kezaliman UMNO-BN-APCO
>
> 4.7.2011 Bertemu di Mahkamah,

with photographs of the defendant and the plaintiff facing each other.

[64] The defendant's blog in P11 at p 4 also consists a caricature of the plaintiff with the words 'Tengok Pak Menteri ingat amah' emblasoned across the plaintiff's caricature.

[65] It was submitted by counsel of the plaintiff that the acts of the defendant blatantly disregard an injunction order which was granted against him. This was never replied to by the defendant's counsel in his submission.

THE WHOLE CONDUCT OF THE DEFENDANT FROM THE TIME THE LIBEL WAS PUBLISHED DOWN TO THE MOMENT OF THE VERDICT

[66] Did the defendant show remorse? Far from it. I gather from his evidence that he was of the view that he did not do anything wrong as what he was doing was merely copying from the *Harakah Daily* and pasted it on his blog site. But, the defendant forgot that the *Harakah Daily* did not mention that the minister was the plaintiff. The defendant in his blog published the article together with the plaintiff's photograph. From his evidence he seems to suggest that he was not at fault by doing so.

[67] What is pertinent to note is that his defence is only justification. It is trite law that to succeed on this defence the defendant need to prove that the article is true in substance and fact. From the evidence, the defendant published the article first and decided to investigate as to the truth of the article subsequently, which is a very reckless conduct on his part. This is clear from the evidence that he went to Jakarta to 'investigate' only after he had published it on his blog site. He went for three days and could not get the alleged victim to verify his story. Subsequently there was no further action on his part. This goes to show that the defendant could not care less as to the truth of what he published about the plaintiff.

[68] There was no effort nor attempt at all on the part of the defendant to verify the allegations before publishing it on his blog. The defendant only went to Jakarta to investigate after he published it in his blog. Investigation post publication would not have served any purpose. Moreover, after the three days visit to Jakarta to investigate did not bear any fruit, the defendant did not do anything subsequently but was content to let his blog be the subject matter of public reading until the filing of the suit herein. This clearly shows malice on the part of the defendant.

[69] The allegation is a very serious one indeed, if one is to believe it to be true. An allegation of such a nature not only destroys the plaintiff's reputation nationally and internationally, but what is more important is the effect to the plaintiff's personal life and family.

[70] From the facts, the intention is clear, to wreck the reputation of the plaintiff personally and politically. It was in evidence that the defendant is on the opposite side of the political divide. The defendant's publication on his blog would have served his purpose of bringing down the plaintiff and this may have some bearing on the political career of the plaintiff.

[71] The defendant is arrogant when he puts in his plea of justification but yet he has no evidence to support his plea from the moment he published the blog. All he has are reports of third parties which have not been verified.

CONCLUSION

[72] As a blogger, the defendant is free to publish and disseminate matters and information which is of public interest, however the information or matter must be true and accurate (especially with regards to one's reputation), not something fished out of hearsay information and without verification. The defendant should act responsibly and be accountable for matters that are put up on his blog. Freedom of expression or publication does not extend to freedom of publication of false stories, untruths or accusations. The internet provides an immediate access to information by the click of a button and it should not be abused to disseminate false information.

[73] The plaintiff is entitled to compensatory damages for the effect that the imputation has on his personal integrity and reputation.

[74] Besides the compensatory damages sought for, I am also awarding aggravated damages due to the arrogant conduct of the defendant who pleaded justification without verification on the truth of the article before the publication and adding on from the article which he alleged he had copied. Even after the injunction order was granted against the defendant, there are still words to the like effect of the plaintiff present in the defendant's blog.

[75] I am also awarding exemplary damages against the defendant. Although there is no evidence of monetary profit gained by the defendant, there is an indirect advantage gained by the defendant in terms of political support for the political party that he is part of. In other words, any form of advantage (need not be pecuniary) would be sufficient to entitle the plaintiff to claim for exemplary damages. I find support in the Court of Appeal case of *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 where Gopal Sri Ram JCA held that:

> It is not a fair interpretation of Lord Devlin's speech in *Rookes v Barnard* [1964] AC 1129 to say that he had intended that grant of punitive or exemplary damages should be limited to cases of monetary profit. That is too narrow an interpretation. On the contrary, any form of advantage gained by a defendant in a defamation case suffices. Further, such an advantage need not produce an immediate profit in money terms. Suffice that it produces an immediate non-pecuniary advantage that may later translate into monetary reward.

[76] Therefore, I am granting the plaintiff compensatory, aggravated and exemplary damages in the global sum of RM300,000.

[77] I am aware that this amount is slightly above the trend of the awards granted in the earlier defamatory cases after the mega awards cases. I would regard that there are special distinguishing factors from the facts and the nature of the allegation in this case that separates it from the other earlier decided cases. Hence that warrants the granting of such an amount as an award in damages.

[78] Therefore taking into consideration of the facts and nature of the allegation by the defendant in his blog site and the value of money in recent years, the amount is considered reasonable. Any amount smaller than that would tantamount to trivialising the incident.

[79] Further, an injunction order against the defendant as prayed in para 13(f) and (g) of the statement of claim.

[80] Interest as pleaded.

[81] As for costs, an amount of RM100,000 is to be paid by the defendant to the plaintiff.

Plaintiff's claim allowed with costs.

Reported by Kohila Nesan